IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.641 OF 2007
WITH
CIVIL APPLICATION NO.1200 OF 2007

Malti Madhukar Ghodake .. Appellant.
Vs.
Ramlal Rajmal Sundecha Mutha .. Respondent.

Mr.A.A.Kumbhakoni for the appellant.
Mr.P.S.Dani for the respondent.

CORAM : D.B.BHOSALE, J.
DATED : 18TH SEPTEMBER, 2007.
P.C.:

. Heard learned counsel for the parties.

2. This appeal by the original defendant is directed against concurrent judgments of the courts below by which a suit filed by the respondent-plaintiff for specific performance of the reconveyance deed executed by the defendants in favour of the plaintiff stands decreed. The sole contention urged by Mr.Kumbhakoni, learned counsel for the appellant was that in view of the self contradictory stand taken in the suit by the plaintiff, the courts below ought to have dismissed the suit. He submitted that on one hand the plaintiff had contended that the transaction in question was mortgage and has, therefore, sought its

redemption, and on the other hand he had also contended that the said transaction was a sale out and out with the condition of repurchase. I perused the plaint so also the judgments of the courts below. From mere perusal of the plaint it is clear that the main prayer in the suit was for specific performance of the agreement executed between the defendant and the plaintiff and in the alternative the plaintiff had prayed for redemption of mortgage. It appears that the sale deed was executed by the plaintiff in favour of the defendant with condition to reconvey the property. In my opinion, no error of law has been committed by the courts below and the concurrent findings of facts are entirely based on the evidence on record. No substantial question of law is raised in the present appeal. In the circumstances the second appeal is dismissed. Consequently, the civil appliation is also disposed of.

(D.B.BHOSALE, J.)